

FILED

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**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRANKLIN J. WELCH,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-74620

Agency No. A35-047-214

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted October 11, 2005^{**}

Before: HALL, T.G. NELSON and TALLMAN, Circuit Judges.

Franklin J. Welch, a native and citizen of Belize, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order denying his second motion to

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

reconsider. To the extent we have jurisdiction, it is conferred by 8 U.S.C. § 1252, and we deny in part and dismiss in part the petition for review.

Even construed liberally, Welch's pro se brief does not challenge the BIA's determination that the motion to reconsider exceeded the numerical limits of 8 C.F.R. § 1003.2(b)(2). Accordingly, Welch has waived any challenge to the BIA's denial of his second motion to reconsider. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996).

We lack jurisdiction to review Welch's contention that the BIA improperly applied the definition of aggravated felony retroactively because Welch did not timely petition for review of the BIA's April 12, 2004, order denying his first motion to reopen and reconsider or the BIA's February 24, 2004, order affirming without opinion the immigration judge's order of removal. *See id.* at 1258 (holding that alien's filing of motion to reopen and reconsider did not toll statutory time in which he could appeal underlying final order).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.